

## **EXHIBIT A**

**From:** [Ben Thomassen](#)  
**To:** [Gamlen, Tod L](#)  
**Cc:** [Rafey Balabanian](#); [Taylor, Mark D](#); [Michaud, Teresa H](#); [Wong, Christina](#); [Jack Yamin](#)  
**Subject:** Re: Smith v. Pegatron, et al. (Case No. 3:14-cv-01822-CRB)  
**Date:** Friday, June 27, 2014 4:28:32 PM

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Should work fine.

> On Jun 27, 2014, at 5:33 PM, "Gamlen, Tod L" <Tod.Gamlen@bakermckenzie.com> wrote:

>

> Ben,

>

> Does 11AM CDT / 9 AM PDT work?

>

> Let me know,

>

> Tod Gamlen

>

> -----Original Message-----

> From: Ben Thomassen [<mailto:bthomassen@edelson.com>]

> Sent: Friday, June 27, 2014 2:38 PM

> To: Gamlen, Tod L

> Cc: Rafey Balabanian; Taylor, Mark D; Michaud, Teresa H; Wong, Christina; Jack Yamin

> Subject: Re: Smith v. Pegatron, et al. (Case No. 3:14-cv-01822-CRB)

>

> Tod:

>

> Thanks for your email and call. Let's discuss on Monday morning. I'm  
> presently open, so let me know what works best for you.

>

> Thanks,

> Ben

>

> Sent from my iPhone

>

>> On Jun 27, 2014, at 12:31 PM, "Gamlen, Tod L" <Tod.Gamlen@bakermckenzie.com> wrote:

>>

>> Ben,

>>

>> We have reviewed your email below with our client and would ask you to reconsider our request  
that the parties stipulate to continuing the July 25 Scheduling Conference and related Rule 26 deadline  
to the following:

>>

>> • Deadline for Rule 26(f) Conference – October 3, 2014

>> • Deadline for Rule 26(a)(1) Disclosure – October 17, 2014

>> • Deadline for parties filing Joint Case Management Statement– October 17, 2014

>> • New date for Initial Scheduling Conference – October 24, 2014

>>

>> As of now there is no operative complaint. Without such complaint, and a meaningful opportunity to  
review and investigate its allegations, we cannot meaningfully or realistically address numerous issues  
we are supposed to cover under Rule 26(f), Rule 26(a)(1), the Court's local rules and standing orders,  
and/or in our Joint Case Management Statement.

>>

>> As you know, our June 12 motion to dismiss was based on several grounds. In our view it is highly  
doubtful that Plaintiff can cure the defects referred to in that motion and it is highly likely a further  
motion to dismiss will be filed as to the amended complaint. And, as we pointed out in our June 12  
motion, unless and until Plaintiff asserts viable claims, Defendants should not be burdened with  
discovery. *Iqbal v. Ashcroft*, 556 U.S. 662, 686 (2009); *Williams v. WMX Technologies, Inc.*, 112 F. 3d

175, 178 (5th Cir. 1997). While it seems that Plaintiff is attempting to cure one or more such defects, the amended complaint could well contain additional or changed allegations which we have not seen and have had no opportunity to investigate.

>>

>> We believe continuing the Initial Scheduling Conference and related Rule 26 deadlines, as set forth above, is the most reasonable approach under the circumstances. If we cannot stipulate to continue the Initial Scheduling Conference and related Rule 26 deadlines we will be filing a motion to continue the Initial Scheduling Conference and related Rule 26 deadlines as per the above schedule. See Local Rule 16-2(d).

>>

>> I would suggest we have a call today or Monday to discuss if Plaintiff is willing to change his position and to now stipulate to the continuances referred to above. I will call you today at 4 PM CDT in this regard; if that time is not good for you let me know a time today or Monday that would work for you.

>>

>> We look forward to hearing from you.

>>

>> Very truly yours,

>>

>> Tod L. Gamlen

>>

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>>

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>> \_\_\_\_\_  
>> From: Ben Thomassen [bthomassen@edelson.com]

>> Sent: Wednesday, June 25, 2014 4:12 PM

>> To: Gamlen, Tod L

>> Cc: Rafey Balabanian; Taylor, Mark D; Michaud, Teresa H; Wong, Christina; Jack Yamin

>> Subject: Smith v. Pegatron, et al. (Case No. 3:14-cv-01822-CRB)

>>

>> Tod:

>>

>> A few items --

>>

>> First, per our call from earlier this week and your voicemail from today, we're not going to stipulate to pushing out the discovery deadlines for the case by 90 days. We presume you'll re-raise your request to stay discovery in conjunction with your next motion to dismiss, and will deal with that request in turn.

>>

>> For now, we should set a date to hold our initial conferences. Given the holiday, I presume meeting on July 2nd or 3rd will be most convenient for everyone. I'm presently open on those dates, so let me know what works best on your end.

>>

>> Second, we're still tuning the amended pleadings. Thus, we're planning on filing a notice of non-opposition and intent to amend tomorrow (i.e., instead of filing an amended complaint at that time). The actual amendment will, of course, be filed on or before July 3rd, in accordance with the timeframe of R 15(a)(1)(B).

>>

>> Third, given that we're still finalizing our pleadings, we're happy to review anything you'd like to send us in support of your view (as you mentioned on Monday's call) that Defendant Pegatron has nothing to do with this case. We obviously don't share your understanding, but if you can show us that we're wrong, we'll of course make the correction.

>>

>> I'll be out of the office through tomorrow, but am available by cell and email if you'd like to discuss any of the above.

>>

>> Thanks,

>> Ben

>>

>> --

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